



David Alcorn, David Alcorn Professional Corporation, Kent Maerki, Bobby Jones, and the Premier Spectrum Group, PMA. (Docs. 189, 191.)

Currently before the Court is SEC's Motion for Summary Judgment against Defendants Janus Spectrum, LLC ("Janus Spectrum"), David Alcorn ("Alcorn"), David Alcorn Professional Corporation ("DAPC") and Kent Maerki ("Maerki"). (Doc. 191.) In support, the SEC submits its Statement of Facts (Doc. 192) and the supporting Declarations of Sana Muttalib, Lorraine Pearson, Coleman Bazelon, and David Van Havermaat, along with the submitted evidence of record. (Docs. 137-161, 193, and 211-213.)

Defendants Janus Spectrum, Alcorn and DAPC filed their response to the SEC's motion for summary judgment (the "Alcorn Defendants"). (Doc. 204). In support, Janus Spectrum, Alcorn and DAPC submitted their Controverting Statement of Facts (Doc. 205) and the supporting Declarations of Jack "Tripp" Forest and David Alcorn (Docs. 206, 207). Defendant Maerki did not file any opposition to the SEC's motion for summary judgment. (Doc. 218.) Subsequently, Janus Spectrum, Alcorn and DAPC filed a revised response to the SEC's motion for summary judgment. (Docs. 209, 210.) The SEC then filed its Reply. (Doc. 216.)

The Court has reviewed and considered all of the pleadings and finds that the SEC is entitled to summary judgment against Defendants Janus Spectrum, Alcorn, DAPC, and Maerki.<sup>2</sup>

## **I. BACKGROUND**

Initially, the Court must resolve Defendant Maerki's failure to respond to the SEC's motion for summary judgment. (Doc. 218.) Under Fed. R. Civ. P. 56, Defendant Maerki's failure to respond to the SEC's assertions of fact permits the Court to "consider the fact[s] undisputed for purposes of the motion" and to grant summary judgment "if the motion,

---

<sup>2</sup>The request for oral argument is denied because the parties have had an adequate opportunity to present their written arguments, and oral argument will not aid the Court's decision. See Lake at Las Vegas Investors Grp., Inc. v. Pacific Malibu Dev., 933 F.2d 724, 729 (9th Cir. 1991).

1 including the facts considered undisputed, show that the movant is entitled to it.” Fed. R. Civ.  
2 P. 56(e)(2); Heinemann v. Satterberg, 731 F.3d 914, 917 (9th Cir. 2013) (stating that the  
3 2010 revisions to Rule 56 “prohibit the grant of summary judgment by default even if there  
4 is a complete failure to respond to the motion.”). Consequently, the Court will consider the  
5 SEC’s properly filed statement of facts in this matter (Doc. 192), as undisputed against  
6 Maerki. See Fed. R. Civ. P. 56(e).

7 *A. Spectrum Overview*

8 The FCC regulates wireless communications; it oversees the various frequencies that  
9 comprise the country’s available wireless capacity or spectrum. (Docs. 89-10, 192 at 3.) The  
10 FCC issues licenses to own and use various frequencies throughout the country. (Doc. 89-  
11 10.) In 2004, the FCC adopted a plan to reconfigure the 800 MHz wireless spectrum band.  
12 (Docs. 89-10, 138, and 161 at 9-10.) Public safety operations were moved to the lower  
13 portion of the 800 MHz band and commercial wireless systems were moved to the higher  
14 portion of the band. (Docs. 89-10, 161 at 9-10.) As part of its plan, the FCC designated the  
15 expansion band and guard band to maintain separation between public safety and cellular  
16 operations on the 800 MHz band. (Id.)

17 FCC rules specify that a license using either the expansion band or the guard band is  
18 only authorized to use a maximum bandwidth of 20 kHz. (Docs. 192 at 4, 89-11.) Major  
19 wireless carriers require a minimum bandwidth of 1.25 to 1.4 MHz. (Id.) It is undisputed that  
20 major wireless carriers could not operate their cellular services on the 800 MHz expansion  
21 band or guard band because those cellular services would not fit within the FCC’s authorized  
22 maximum bandwidth of 20 kHz. (Id.) For instance, regarding the use of the FCC spectrum  
23 licenses in the guard and expansion band, Defendants were repeatedly warned in trade  
24 articles, in conversations with Sprint, and by their own advisors, that their underlying  
25 business model of leasing the FCC spectrum back to Sprint could not succeed. (Doc. 192 at  
26 18-22.)

27 *B. Janus Spectrum Business Model*

28 Janus Spectrum operated as a business seeking to apply, obtain, and resell FCC

1 licenses in the expansion and guard band. (Docs. 89-13, 192 at 5-7.) Janus Spectrum  
2 prepared applications for FCC cellular spectrum licenses on behalf of third-party clients,  
3 Defendant Fundraising Entities. (Docs. 192 at 5-7.) Janus Spectrum referred to the  
4 fundraising entities as “clients.” (Doc. 89-13.) These application services included working  
5 with third parties, such as engineers and attorneys, to prepare and file spectrum applications  
6 with the FCC for 800 MHz spectrum licenses in the expansion and guard band. (Docs. 89-13;  
7 97-3 at 1-7; 161 at 1-31, 63-66.) In addition to offering license application services, Janus  
8 Spectrum also offered to manage and monetize any spectrum licenses that would be granted  
9 by the FCC to its clients.<sup>3</sup> (See, e.g., Docs. 89-13, 97-3, 139-3, 142-4).

10 During the period at issue, 2011-2015, Janus Spectrum used three successive versions  
11 of agreements with its clients. (*Id.*) Under the original version of its “broker services  
12 agreement,” paragraph 7 provided that Janus Spectrum was appointed to act as the client’s  
13 exclusive agent to manage and monetize the spectrum licenses, for which it would receive  
14 an 18% “transaction fee” or commission on any such transaction. (*Id.*) This 18% profit  
15 sharing provision was in addition to the payment of an upfront non-refundable \$40,000  
16 license application fee charged by Janus Spectrum. (*Id.*)

17 Subsequently, Janus Spectrum revised its original broker services agreement, in part,  
18 to delete paragraph 7, and for its existing clients to execute a new version of Janus  
19 Spectrum’s services agreement entitled Commercialization Agreement. (Docs. 97-3, 139-3.)  
20 The revised agreement deleted paragraph 7. (Doc. 139-3 at 1.) However, Janus Spectrum was  
21

---

22  
23 <sup>3</sup>Janus Spectrum, Alcorn and DAPC contend that they subsequently revised their  
24 contracts with clients withdrawing the provision that Janus Spectrum would broker a  
subsequent sale or to help clients monetize an acquired license. (Doc. 210 at 3-4.)

25 The record is clear that Janus Spectrum was more than simply a license application  
26 services company. (See Doc. 216 at 6-7.) Alcorn’s testimony confirms this status. (Doc. 152-  
27 9) (Alcorn testifying that under the original services agreement, licenses would be managed  
and monetized by Janus Spectrum and that under the revised services agreement clients  
28 would continue to use Janus Spectrum in an attempt to monetize and manage the licenses).  
In an email, Alcorn further confirmed that the message should be clear that Janus Spectrum  
is the best qualified to manage client’s licenses. (Doc. 142-3.)

1 still appointed to act as the client's exclusive agent in connection with any sale or lease of  
2 the spectrum licenses, and Janus Spectrum retained an 18% profit sharing interest in the  
3 management and monetization of spectrum licenses, in the form of a commission. (Doc. 139-  
4 3.) Janus Spectrum and its clients continued to expect that Janus Spectrum would be  
5 responsible for the management and monetization of the spectrum licenses under the revised  
6 agreement. (Doc. 192 at 7.)

7 The Commercialization Agreement was again subsequently amended. (Doc. 149-2.)  
8 The revised agreement deleted Janus Spectrum's 18% profit sharing interest. (*Id.*)  
9 Notwithstanding the revisions to Janus Spectrum's agreements with its clients, Janus  
10 Spectrum's clients continued to look to Janus Spectrum to manage and monetize the licenses.  
11 (*See, e.g.,* Docs. 154-5 at 15-17, 25-26, 31-38; 192 at 6.)

12 Under all these various agreements, Janus Spectrum received from approximately 325  
13 nationwide investors, including the Fundraising Entities, spectrum license application fees  
14 totaling \$9,242,167. (Doc. 185 at 9-10.)

### 15 *C. Fundraising Entities*

16 The fundraising entity under Judgment Defendant Bobby Jones ("Jones") was Premier  
17 Spectrum Group, PMA ("PSG"). Under Judgment Defendant Daryl Bank ("Bank") were  
18 Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management,  
19 LLC; Spectrum 100, LLC; Spectrum 100 Management, LLC; Prime Spectrum, LLC; and  
20 Prime Spectrum Management, LLC. Under Judgment Defendants Terry Johnson ("Johnson")  
21 and Raymon Chadwick ("Chadwick") were Innovative Group, PMA; Premier Group, PMA;  
22 and Prosperity Group, PMA.

#### 23 1. Judgment Defendant Bobby Jones

24 Jones formed Premier Spectrum Group in January 2013. (Docs. 137-3, 145.)  
25 Prospective investors received the Articles of Association for Premier Spectrum Group and  
26 the Texas Joint-Stock Company (Bearer Shares) of Premier Spectrum Management before  
27 investing with Premier Spectrum Group. (Docs. 138-6, 138-7.) Jones drafted a document  
28 entitled "Membership Fee Offering, Presented Exclusively By Premier Spectrum Group, a

Private Membership Association” that was sent to prospective investors. (Docs. 137-3, 212-4 at 6-7.) Among other things, the offering materials described the opportunity for its members to obtain significant profits resulting from the acquisition and monetization of “valuable” FCC spectrum. (Doc. 137-3.) The materials stated that “Premier Spectrum Group has a strategic alliance with channel partners whose staff members, in the late 1980s, helped investors take advantage of a similar, little-recognized opportunity to acquire FCC licenses. The value of the combined spectrum acquired by those investors for \$75 million back in the 1980s is today worth greater than \$3.6 billion – a 48 time return on investment.” (*Id.* at 7.) The materials asserted that an opportunity presently exists to file and own valuable spectrum in the top 100 largest markets in the U.S., including New York, Washington, DC, and Chicago, IL. (*Id.*) “This spectrum is in close proximity to spectrum for which AT&T and Verizon paid nearly \$17 billion in 2008; it is these channels on which both carriers are building out their modern LTE networks.” (*Id.*) “Today, this targeted 800 MHz Spectrum is among the most coveted spectrum to wireless carriers. The wireless industry has already acknowledged that future mobile broadband connections will run over this lower band spectrum. We anticipate ownership of this valuable, lower band spectrum will provide Premier Spectrum Group with opportunities for increases as the value of spectrum rises over time, and attractive income opportunities through a lease or joint-venture with one or more wireless service providers.” (*Id.*)

The offering stated that “Premier Spectrum Group will apply for 5 channels in each of the 25 largest Economic Area Markets, for a total of 125 channels.” (*Id.* at 8.) The offering materials further stated that “Revenue is forecasted to begin within approximately 24 months” (*id.* at 10), and contained a section entitled “our team,” describing Alcorn and Maerki, and referring to Maerki as a “recognized icon in the wireless industry.” (*Id.* at 13.)

In all, Jones’s fundraising entity, PSG, raised a total of \$407,050 from 13 nationwide investors. (Doc. 157 at 23.) Of that amount, it sent \$350,000 to Janus Spectrum. (*Id.* at 6, 9.) In addition, Jones received, in his capacity as trustee of the “Because He Lives” trust, \$567,140 in commissions or finders fees from Janus Spectrum for referring other investors.

(Id. at 7.)

Jones made no effort to determine whether his investors in PSG were accredited investors. (Doc. 192 at 9.) Other than paying for the license applications, Jones did not expect investors to do any additional work. (Id.) Investor funds in PSG were pooled and used to purchase ten license applications from Janus Spectrum for \$40,000 each. (Id.) The licenses are still not available for the geographic areas of PSG's applications; PSG has yet to acquire or monetize, any spectrum licenses. (Id.) Pursuant to the terms of the broker services agreement between Janus Spectrum and PSG, Janus Spectrum would have had a managerial role in monetizing any licenses that would be awarded to PSG. (Id.)

## 2. Judgment Defendant Daryl Bank, et al.

Prospective investors in Bank's fundraising entities, Janus Spectrum Group, LLC, Spectrum 100, LLC, and Prime Spectrum, LLC, received an Operating Agreement and an Investment Offering and Investment Summary. (Docs. 192 at 7-8, see also 144-2 thru 144-4.) Each Operating Agreement provides that the respective fundraising entity has been formed for the purpose of acquiring and monetizing 800 MHz Specialized Mobile Radio ("SMR") and 900 SMR licenses, and that their respective management companies would "have complete power and authority for the management and operation of the Company's assets and business." (See, e.g., Doc. 144-2.) On the cover page, the Investment Summary document for Prime Spectrum, LLC acknowledged that its offering was a "security" but claimed that it was "exempt from SEC registration." (Doc. 144-7.) The investors in Bank's entities never exercised voting power with respect to any activities of the entities, and their participation was entirely passive. (Doc. 192 at 7-8.)

The "Investment Offering" and "Investment Summary" documents further stated that Dominion Private Client Group, LLC had partnered with Janus Spectrum to offer investors with opportunities to achieve a 100% annual preferred return on invested capital plus 50% of additional profits, derived from anticipated revenues resulting from the acquisition and monetization of valuable FCC spectrum licenses. (Docs. 144-6, 144-7.) These documents included projections of monthly cash flow from licenses in the top 100 economic areas in the



1 United States and projected annual returns on investment ranging over 1000% depending on  
2 the economic area. (Id.) The Investment Offering and Investment Summary documents also  
3 stated that acquisition costs for each license ranged from \$100,000 to \$125,000, depending  
4 on the fundraising entity. (Id.)

5 These documents also described the Janus Spectrum team, including profiles of  
6 Alcorn and Maerki, which described Maerki as being “recognized as an icon in the wireless  
7 industry” and had been a managing partner of The Cellular Corporation, where Maerki and  
8 his clients “invested \$75 Million in an FCC lottery and was awarded spectrum that is  
9 currently valued at \$3.6 Billion.” (Doc. 144-6 at 15.)

10 Bank’s entities sent to prospective investors one-page “opportunity alerts” that stated  
11 that “Dominion Private Client Group, LLC has partnered with Janus Spectrum and its team  
12 who, in the late 1980s, helped investors take advantage of a little recognized opportunity to  
13 acquire FCC licenses.” (Docs. 139-9, 140-1.)

14 In all, Bank and his fundraising entities raised \$8,359,400 from 111 nationwide  
15 investors. Of that total amount, Bank sent \$3,864,500 to Janus Spectrum. (Doc. 157 at 14.)

### 16 3. Judgment Defendants Johnson and Chadwick

17 Johnson and Chadwick solicited investors to join a “private membership association”  
18 (“PMA”) in which each investor would become a member and would own a percentage  
19 interest in each spectrum license held by the association based on the amount of their  
20 investment. (Docs. 192 at 8-9; see also 138-5.) Members in the Johnson and Chadwick  
21 entities received a copy of their respective entities’ “articles of association.” (See, e.g., Doc.  
22 138-5.) Johnson and Chadwick also provided to their members a copy of the broker services  
23 agreement between Janus Spectrum and the PMA. (Docs. 139-2, 139-3.) The purpose of each  
24 PMA was to apply for 25 licenses in the expansion band or guard band through Janus  
25 Spectrum. (Doc. 153-9 at 23.) Johnson later admitted at his deposition that the agreements  
26 Innovative Group, Premier Group and Prosperity Group had with their members were  
27 “securities” under the three-part test laid out in SEC v. W.J. Howey Co., 328 U.S. 293  
28 (1946). (Id. at 4-6.)



1 Johnson and Chadwick charged their members \$62,500 per spectrum license  
2 application, even though Janus Spectrum only charged Johnson's and Chadwick's entities  
3 \$40,000 per application. (*Id.* at 8.) To conceal their "commissions" from their investors,  
4 Johnson and Chadwick obtained a "commission side letter" from Alcorn, in order to have a  
5 receipt that they could show to their investors, showing they had sent \$61,500 to Janus  
6 Spectrum, rather than \$40,000. (Docs. 139-7, 192 at 9.)

7 In all, Johnson and Chadwick raised \$3,859,580, from a total of 201 nationwide  
8 investors, which funds were pooled to purchase license applications. (Doc. 157 at 22-23.) All  
9 of those funds were raised before February 1, 2014. Of that total amount, \$2,785,000 was  
10 sent to Janus Spectrum. (*Id.*) In addition, Johnson and Chadwick received, through their  
11 control of the Integrity Group bank account, \$260,000 in commissions or finders fees from  
12 Janus Spectrum. (*Id.* at 23.)

13 *D. Roles of Defendants Janus Spectrum, Alcorn, DAPC, and Maerki*

14 The SEC has filed a very lengthy evidentiary record in support of the spectrum license  
15 scheme that Defendants orchestrated against the investors and potential investors. (Docs.  
16 137-161, 184-188, 211-213.) Alcorn and Maerki, through Janus Spectrum, were the  
17 orchestrators of the scheme.

18 Alcorn is the president of David Alcorn Professional Corporation, DAPC, which  
19 became the sole owner of Janus Spectrum as of January 2014. (Docs. 128, 152-8.) Prior to  
20 January 2014, DAPC held a 55% ownership interest in Janus Spectrum. (*Id.*)

21 Alcorn and Maerki, through presentations, webinars, emails, in-person meetings,  
22 phone calls, conference calls, and radio shows, made representations to potential clients and  
23 investors in the Fundraising Entities about the characteristics and benefits of acquiring FCC  
24 spectrum licenses. (Docs. 192 at 11.) Alcorn and Maerki represented the use of such licenses,  
25 the expected returns on investing in spectrum licenses, the lack of risk and passive nature of  
26 the investment, the urgency in filing license applications, the associated application fees, and  
27 the experience of the Janus Spectrum's principals. (*Id.*)

28 Maerki created the audio-video presentations entitled "Educational Preview About

1 Airwaves Presentation” and “Money from Thin Air.” Alcorn and Maerki provided these  
2 presentations to Bank, Jones, Johnson, and Chadwick for their use in soliciting investors.  
3 (Docs. 192 at 11, 137-5, 216 at 8 n.5.) Alcorn created a “*pro forma*” estimate of the value of  
4 licenses in the expansion and guard bands in the top 25 economic areas and forwarded it to  
5 Jones, Bank, Johnson, and Chadwick for their use in soliciting investors. (Doc. 192 at 13.)  
6 Alcorn estimated annual returns ranging up to 3373% depending on the economic area, and  
7 an average annual return from all 25 economic areas of 298%. (*Id.*)

8 In his “Money from Thin Air” presentation, Maerki claimed: “It’s a work free  
9 business. It really is a work free business. It is ownership of spectrum. It has very high  
10 income historically. It has very low risk, hardly any... It’s work free, there is just nothing to  
11 do. You look at your tower, you don’t see anything happening, you go home.” (Doc. 137-5  
12 at 18.) He also referred to the opportunity to own spectrum that was “high demand spectrum  
13 that is already in use with current income streams.” (*Id.* at 20.) Maerki also stated that  
14 “demand for 600,700, 800, and 900 MHz spectrum is the most efficient out there. That is  
15 what we are talking about today, those are the Rolls Royce of spectrum.” (*Id.* at 25.)

16 Maerki further claimed explained that “Sprint or somebody [like] them” does not want  
17 to lose their capacity and would “probably lease it back [from] you and pay you \$4,800 a  
18 month.” (Doc. 137-5 at 34.) Maerki continued, “Sprint is going to need [the 800 MHz  
19 spectrum] . . . But if they don’t take it, AT&T needs it, and so does Verizon. More  
20 importantly T-Mobile really needs it. So do the other ones.” (*Id.* at 34-35.)<sup>4</sup> Maerki also  
21 explained the expected revenues that could be realized from owning spectrum licenses:  
22 “They have 360 channels in that area, dividing that into the million, they’re making about  
23

---

24 <sup>4</sup>Contrary to the claims of the Alcorn defendants, Andrew Seybold (Docs. 154-7, 212-  
25 10), Jack Tripp Forrest (Docs. 153-5, 211-10, 212), Peter Lewis (Docs. 154-2, 212-6), and  
26 Peter Moncure (Docs. 213-4, 146-2, 146-3), all agreed that spectrum in the expansion and  
27 guard bands could not be used by the major wireless carriers. Another Alcorn Defendants’  
28 witness, Alan Tilles, stated that “There will be at some point a way to apply for these  
frequencies. The better question is why would you apply for them.” (Docs. 145-8, 152-9 at  
25-27.) In March 2012, Tilles also told Alcorn that “There’s NO spectrum below 861 MHz  
(and above 851 MHz) that can be used for any kind of broadband.” (Doc. 151.)

1 \$3,000 a channel. Your license in that area, should you select to be in that area, would be for  
2 four channels times \$3,000 or \$12,000 a month. Wow.” (Id. at 34.) Maerki continued: “In  
3 summary, let’s put it this way. There is a limited number of available licenses. Of course, it’s  
4 on a first come/first serve basis, very unique income stream opportunity, own somebody  
5 else’s income stream that they have to give up. Very low risk, As a result, very high income.  
6 Small investment, high value, certainly work free . . . How long before I make money? We  
7 have discussed that, a year or two years unless it’s a border, two to five years. Why isn’t  
8 everyone doing this? Simply, they haven’t learned about it yet . . . Urgency? Yes. First  
9 come/first serve. These will be gone in three to five months.” (Id. at 35-37.) At the end of his  
10 “Educational Preview About Airwaves Presentation,” Maerki explained to investors that  
11 “over 50 percent of the spectrum available as a result of what I have just described has  
12 already been applied for. This is very limited, so please get more information quickly.” (Id.  
13 at 12.)

14 In an effort to recruit additional investors, Alcorn sent an email to Jones and Johnson,  
15 copying Maerki and others, stating that “Kent [Maerki] and I are open for suggestions on  
16 how we can help our people energize their individual and group “Operation Market Thrust.”  
17 (Doc. 141-1.) Alcorn continued, “We are prepared to throw any amount of time and  
18 resources your way to help.” (Id.) Alcorn also stated, “Keep in mind, the “Icon” [Kent  
19 Maerki] is not only willing to address your people but eager to do so. I personally have now  
20 witnessed him doing these over and over and with consistent and positive results. Never has  
21 there been a presentation that did not create sales. Use all your tools! Let us know how we  
22 can help you!!!” (Id.)

23 Alcorn spoke with a person in the legal department at Sprint and was told that Sprint  
24 would not have an interest in Janus Spectrum’s licenses and that Sprint was forbidden from  
25 buying them. (Doc. 192 at 21.)

26 Alcorn also assisted Bank in creating Bank’s “pitch book,” reviewed Bank’s offering  
27 materials, and provided Bank with a list of potential investors who had contacted Janus  
28 Spectrum. (Doc. 143-3, 147, 151-7, 192 at 13.) Alcorn was also aware that Bank was pooling

investors' monies to acquire licenses from Janus Spectrum. (*Id.*)

Alcorn and Maerki attended an event hosted by Jones to solicit investors for PSG. Maerki told attendees, "We have two of our licenses. We will have more and ultimately we will have all 25. Everybody will have their licenses. . . . If you hire us, we will go talk to Sprint and make a deal. That's what we can guarantee. We can't guarantee anything else." (Doc. 138-1 at 40.) At the same meeting, Alcorn told an investor, "The most likely user will be Sprint but the market is very deep." (Doc. 152-8 at 21.)

Alcorn and Maerki held a conference call with clients and prospective clients offering 30% commissions and discussed using a private placement memorandum in soliciting investors. (Docs. 137-9, 192 at 14.) Maerki knew that Bank was using the "Money From Thin Air" video to solicit investors as he had given Bank permission to use it. (Doc. 192 at 14.) Maerki also sent a PowerPoint presentation and a revised version of the "Money from Thin Air" video to Jones. (*Id.*) Maerki also advised Jones, Johnson and Chadwick on how they should set up their respective fundraising entities. (*Id.*)

## II. STANDARD OF REVIEW

### *Summary Judgment*

"A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought." Fed. R. Civ. P. 56(a). A court must grant summary judgment if the pleadings and supporting documents, viewed in the light most favorable to the nonmoving party, show "that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Id.*; see Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Jesinger v. Nevada Fed. Credit Union, 24 F.3d 1127, 1130 (9th Cir. 1994). Substantive law determines which facts are material. See Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986); see also Jesinger, 24 F.3d at 1130. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248. The dispute must also be genuine, that is, the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Id.*; see Jesinger, 24 F.3d at 1130.

1 A principal purpose of summary judgment is “to isolate and dispose of factually  
2 unsupported claims.” Celotex, 477 U.S. at 323-24. Summary judgment is appropriate against  
3 a party who “fails to make a showing sufficient to establish the existence of an element  
4 essential to that party’s case, and on which that party will bear the burden of proof at trial.”  
5 Id. at 322; see also Citadel Holding Corp. v. Roven, 26 F.3d 960, 964 (9th Cir. 1994). The  
6 moving party need not disprove matters on which the opponent has the burden of proof at  
7 trial. See Celotex, 477 U.S. at 323. The party opposing summary judgment may not rest upon  
8 the mere allegations or denials of the party’s pleadings, but must set forth “specific facts  
9 showing that there is a genuine issue for trial.” See Matsushita Elec. Indus. Co. v. Zenith  
10 Radio, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P. 56(e) (1963) (amended 2010));  
11 Brinson v. Linda Rose Joint Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). The non-movant’s  
12 bare assertions, standing alone, are insufficient to create a material issue of fact and defeat  
13 a motion for summary judgment. Anderson, 477 U.S. at 247-48.

### 14 **III. DISCUSSION**

#### 15 *A. SEC’s Section 5 Securities Allegations Against Janus Spectrum, Alcorn and Maerki*

16 Based on the material evidence presented, the SEC alleges that it is entitled to  
17 summary judgment on its claim that Janus Spectrum, Alcorn and Maerki violated Section 5  
18 of the Securities Act, 15 U.S.C. § 77e(a) and (c) (“Section 5”), by selling securities without  
19 the required prior registration. (Doc. 191 at 11-14.) The SEC alleges that Janus Spectrum,  
20 Alcorn and Maerki are liable both for (1) Janus Spectrum’s offer and sale of securities, and  
21 (2) as substantial participants in each Fundraising Entity’s offer and sale of securities. (Id.  
22 at 11.)

23 Janus Spectrum and Alcorn contend that they did not offer services to the public at  
24 large or manage a business which managed people’s investments; they offered services for  
25 a fee to license applicants who applied to the FCC to be the exclusive owners and builders  
26 of certain spectrum licenses. (Doc. 210 at 3.) Janus Spectrum and Alcorn contend that they  
27 did not sell securities, and, consequently, the registration requirements of the Securities Act  
28 are not required. (Id.) Alcorn further states he had no reason to believe that Janus Spectrum

1 was involved in the sale of securities because while he was associated with Smartcomm, he  
2 was informed that the SEC had investigated that entity, and its similar business model, and  
3 found no action necessary. (Id. at 5.) As to the SEC’s substantial participant allegation, Janus  
4 Spectrum/Alcorn disputes causation, asserting that it was Maerki who orchestrated the events  
5 relied upon by the SEC. (Id. at 13.)

6 The SEC replies that the “success of the venture” was dependent on Janus Spectrum’s  
7 ability to sell or lease the spectrum back to Sprint or to another major wireless carrier, as  
8 opposed to simply preserving the license for some indeterminate future use. (Doc. 216 at 7.)  
9 The SEC cites Alcorn’s testimony in support of its argument that Alcorn and Maerki were  
10 both “a necessary participant and substantial factor” in each Fundraising Entity’s offering  
11 and sale of securities. (See Doc. 216 at 8 n.5) (Alcorn testifying that he offered to help Bank  
12 improve his business with Janus Spectrum and offered to review Bank’s offering materials;  
13 that Alcorn reviewed and edited “Money From Thin Air” while at Janus Spectrum; that  
14 Alcorn created and used pro forma financial projections when speaking with clients and  
15 prospective clients; that Alcorn and Maerki sent both the “Educational Preview About  
16 Airwaves” and “Money From Thin Air” videos to potential investors and to Bank, Jones,  
17 Johnson and Chadwick for their use in soliciting investors).

#### 18 1. Fundraising Entities’ Offerings Were Securities

19 The Court first finds that the membership interests that Jones, Johnson, and Chadwick  
20 sold to investors for the purchase of FCC spectrum licenses were securities. (Doc. 192 at 8-  
21 11.) Additionally, the Court finds that the agreements that Bank made with his investors,  
22 including the Operating Agreement, Investment Offering, and Investment Summary, were  
23 securities. (Id. at 7-8.)

24 Under both the Securities Act, 15 U.S.C. § 77b(a)(1), and the Exchange Act, 15  
25 U.S.C. § 78c(a)(10), a security is defined as, among other things, an investment contract. The  
26 showing of an investment contract is established by: (1) an investment of money; (2) in a  
27 common enterprise, evidenced by either horizontal or vertical pooling; (3) with an  
28 expectation of income or profits to be derived solely from the efforts of the promoter or a



1 third party. See SEC v. W.J. Howey Co., 328 U.S. 293, 298-99 (1946); SEC v. Rubera, 350  
2 F.3d 1084, 1090 (9th Cir. 2003).

3 *a. Investment of Money*

4 The investment of money prong requires that the investor commit his assets to the  
5 enterprise in such a manner as to subject himself to financial loss. See Rubera, 350 F.3d at  
6 1090.

7 Jones drafted the document entitled “Membership Fee Offering, Presented Exclusively  
8 by Premier Spectrum Group, a Private Membership Association.” (Docs. 192 at 7, 137-3.)  
9 The “Membership Fee Offering” was sent to potential investors, soliciting the opportunity  
10 to acquire and monetize allegedly valuable FCC licenses. (Doc. 137-3.) The “Membership  
11 Fee Offering” for PSG further stated that “Revenue is forecasted to begin within  
12 approximately 24 months.” (*Id.*) PSG purchased ten license applications from Janus  
13 Spectrum in 2013 for \$40,000 each. (Doc. 192 at 9.) In all, Jones through PSG raised a total  
14 of \$407,050 from 13 nationwide investors, which was pooled to invest in FCC spectrum  
15 licenses. (*Id.*)

16 Bank forwarded to potential investors documents entitled “Investment Offering” and  
17 “Investment Summary.” (Docs. 144-6, 144-7.) These documents state that Dominion Private  
18 Client Group, LLC had partnered with Janus Spectrum to offer investors with opportunities  
19 to achieve a 100% annual preferred return on invested capital plus 50% of additional profits,  
20 derived from anticipated revenues resulting from the acquisition and monetization of  
21 valuable FCC spectrum licenses. (*Id.*) These documents included projections of monthly cash  
22 flow from licenses in the top 100 economic areas in the United States and projected annual  
23 returns on investment ranging over 1000% depending on the economic area. (*Id.*) The  
24 Investment Offering and Investment Summary documents also stated that acquisition costs  
25 for each license ranged from \$100,000 to \$125,000, depending on the fundraising entity. (*Id.*)  
26 In all, Bank and his fundraising entities raised \$8,359,400 from 111 nationwide investors.  
27 Of that total amount, Bank sent \$3,864,500 to Janus Spectrum. (Doc. 157 at 14.)

28 In order to avoid the application of securities laws, Maerki advised Jones, Johnson,



1 and Chadwick to use a “private membership association” (“PMA”) instead of an LLC. (Docs.  
2 149-4, 153-9.) Consequently, Johnson, Chadwick, and Jones solicited investors to join a  
3 PMA in which each investor would become a member and own a percentage interest in each  
4 spectrum license held by the association based on the amount of their investment. (Docs. 192  
5 at 8-9; see also 138-5.) Members in the Johnson and Chadwick entities received a copy of  
6 their respective entities’ “articles of association.” (*Id.*) Johnson and Chadwick promised  
7 investors that the PMA would apply for spectrum licenses in each of the top 25 wireless  
8 economic areas through Janus Spectrum, projecting a monthly return of 85%. (See, e.g.,  
9 Docs. 149-5, 139-8.) In all, Johnson and Chadwick raised \$3,859,580, from a total of 201  
10 nationwide investors, which funds were pooled to purchase license applications. (Doc. 157  
11 at 22-23.)

12 *b. Common Enterprise*

13 The Ninth Circuit recognizes traditional horizontal commonality where pooling is  
14 present. See Hocking v. Dubois, 885 F.2d 1449, 1459 (9th Cir. 1989) (*en banc*). In horizontal  
15 commonality, the investors pool their assets in return for a *pro rata* share of the profits of the  
16 common enterprise. *Id.* Vertical commonality requires that the investor and the promoter,  
17 seller, or other party be involved in some common venture. Brodt v. Bache & Co., 595 F.2d  
18 459, 461 (9th Cir. 1978).

19 Here, horizontal commonality is present as Jones, through PSG, Banks, through his  
20 numerous fundraising entities, and Johnson/Chadwick all pooled investors’ funds to allow  
21 them to purchase packages of license applications from Janus Spectrum for \$40,000 each  
22 (Johnson/Chadwick charging \$62,500 each). (Doc. 192 at 7-11.) Moreover, vertical  
23 commonality is also satisfied. The fundraising entities of Jones, Bank, and  
24 Johnson/Chadwick all depended on Janus Spectrum to prepare, file, and obtain FCC  
25 spectrum licenses for the investors. (*Id.*)

26 *c. Expectation of Profits Produced by Others*

27 The third element of the Howey test requires that the investor be led to expect profits  
28 solely from the efforts of others. Rubera, 350 F.3d at 1091-92; see also SEC v. Comcoa, 855

1 F. Supp. 1258, 1261-62 (S.D. Fla. 1994) (finding defendants' offering of spectrum license  
2 application services constituted a security under Howey, where investors were dependent on  
3 Comcoa for obtaining and leasing licenses).

4 Here, this element of Howey is also satisfied because the investors always looked to  
5 and expected that Janus Spectrum would prepare, file, and obtain FCC spectrum licenses for  
6 the investors, as well as manage and monetize the licenses obtained. (Docs. 192 at 7-11;  
7 142-3; 142-10; 152-9 at 19-20, 48-49, 55-56.)

8 Thus, the undisputed facts establish that Jones's, Bank's, and Johnson/Chadwick's  
9 Fundraising Entities offered and sold securities to investors.

10 2. Section 5 Violation of the Securities Act

11 Next, the SEC alleges that Maerki, Alcorn, and Janus Spectrum violated the Securities  
12 Act because Section 5(a)(1) prohibits the direct or indirect sale of securities unless a  
13 registration statement is in effect, and Section 5(c) prohibits the offer or sale of securities  
14 unless a registration statement is in effect. (Doc. 191 at 11-15.)

15 Under Section 5 of the Securities Act, the SEC must show that (1) no registration  
16 statement was in effect as to the securities; (2) the defendant directly or indirectly sold or  
17 offered to sell securities; and (3) the sale or offer was made through interstate commerce. See  
18 SEC v. CMKM Diamonds, Inc., 729 F.3d 1248, 1255 (9th Cir. 2013). Once the SEC  
19 introduces evidence that the registration provisions have been violated, the burden shifts to  
20 the defendant to show that an exemption applies. See 15 U.S.C. § 77c(b); SEC v. Murphy,  
21 626 F.2d 633, 641 (9th Cir. 1980). Section 5 is a strict liability offense and requires no  
22 showing of scienter, or even negligence. CMKM Diamonds, 729 F.3d at 1256.

23 Here, the Fundraising Entities sold securities to investors nationwide which had been  
24 pooled to invest in FCC spectrum licenses through Janus Spectrum. (Doc. 192 at 7-11.) Thus,  
25 the SEC introduced evidence establishing that the Fundraising Entities sold securities  
26 through interstate commerce. (Id.) Further, it is undisputed that the Fundraising Entities never  
27 registered with the SEC the offer and sale of these securities. (Doc. 128.)

28 Section 5 liability extends to those who are "both a necessary participant and a

1 substantial factor in the sales transaction[s].” SEC v. Phan, 500 F.3d 895, 906 (9th Cir.  
2 2007). The test is “whether, but for the defendant’s participation, the sales transaction would  
3 not have taken place.” Murphy, 626 F.2d at 651-52. The defendant’s acts must have been  
4 more than *de minimis*. Id. Thus, section 5(a) and (c) impose liability on persons who “directly  
5 or indirectly” offer or sell an unregistered security. Section 5 is not limited to the person or  
6 entity who ultimately passes title to the security. Murphy, 626 F.2d at 649.

7 Here, Janus Spectrum, Alcorn and Maerki are liable for the offer and sale of the  
8 securities offered by the Fundraising Entities and their principals. Although Janus Spectrum,  
9 Alcorn and Maerki did not directly offer or sell the Fundraising Entities’ securities, they did  
10 so indirectly as they were both “a necessary participant and substantial factor” in all of the  
11 Fundraising Entities’ offerings and sale of securities. Although the Fundraising Entities were  
12 the actual issuers of their securities, Janus Spectrum, Alcorn and Maerki orchestrated and  
13 oversaw all of their offerings. Janus Spectrum, through Alcorn and Maerki, played a critical  
14 role in promoting the sale of the membership interests by, among other things: providing  
15 promotional videos for use in soliciting investors using “Money From Thin Air;” and  
16 “Educational Preview About Airwaves Presentation.” Alcorn and Maerki assisted with  
17 drafting marketing materials; provided sample offering documents; training salespeople;  
18 participating in investor presentations or meetings for each fundraising entity; answering  
19 potential investors questions; making investor referrals to the fundraising entities; creating  
20 financial projections to be used in soliciting investors; and, by agreeing to manage and  
21 monetize the spectrum licenses. (Doc. 192 at 11-14.) Without the services of Janus Spectrum,  
22 through Maerki and Alcorn, the Fundraising Entities would not have been able to offer and  
23 sell securities to its investors. (Id.)

24 Therefore, based on the evidence submitted, Janus Spectrum, Alcorn and Maerki were  
25 both necessary participants and substantial factors in the Fundraising Entities’ offerings and  
26 sales transactions of securities in violation of Sections 5(a) and (c) of the Securities Act. The  
27 SEC is entitled to summary judgment against Janus Spectrum, Alcorn and Maerki on the  
28 SEC’s Third Claim for Relief. (Doc. 105 at 29-30.)

1           *B. SEC's Fraud Allegations Against Janus Spectrum, Alcorn, Maerki, and DAPC*

2           Next, the SEC alleges it is entitled to summary judgment on its claim that Janus  
3     Spectrum, Alcorn and Maerki violated the anti-fraud provisions of Section 17(a) of the  
4     Securities Act, 15 U.S.C. § 77q ("Section 17"). (Docs. 191 at 14-19, 105 at 28.) The SEC  
5     also alleges that it is entitled to summary judgment on its claim that Janus Spectrum, Alcorn  
6     and Maerki violated Section 10(b) of the Exchange Act of 1934 ("Exchange Act"), 15  
7     U.S.C. § 78j, and 17 C.F.R. § 240.10b-5 ("Rule 10b-5") (collectively "Section 10(b)"). (*Id.*)  
8     In its Rule 10b-5 allegations, the SEC further alleges that DAPC, as a control person, also  
9     violated Rule 10b-5.<sup>5</sup> (*Id.*)

10          The Alcorn Defendants first contend that there is no liability for a fraudulent scheme  
11     because omissions are actionable only if there was a duty to disclose that information. (Doc.  
12     210 at 14 (citing WPP Luxembourg Gamma Three Sari v. Spot Runner, Inc., 655 F.3d 1039,  
13     1048 (9th Cir. 2011).) According to the Alcorn Defendants, parties to an impersonal market  
14     transaction have no such duty without a fiduciary or agency relationship, prior dealings, or  
15     circumstances of trust and confidence. (*Id.*) Next, the Alcorn Defendants contend that  
16     material misrepresentations are generally issues for the jury, not for summary judgment, and  
17     further that the SEC has not established that the Alcorn Defendants made material  
18     misrepresentations. (*Id.* at 15.) Finally, the Alcorn Defendants contend that scienter is a  
19     question of fact for the jury. (*Id.* at 16.)

20          Although Janus Spectrum, Alcorn, and Maerki did not directly offer or sell the  
21     Fundraising Entities' securities, they did so indirectly as they were all both "a necessary  
22     participant and substantial factor" in the Fundraising Entities' offerings and sales of  
23     securities. At issue is whether Janus Spectrum, Alcorn, and Maerki also violated the anti-  
24     fraud provisions of Section 17 and Section 10(b).

---

25  
26  
27          <sup>5</sup>The Court will consider *infra* DAPC's liability as a control person pursuant to  
28     Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a). The SEC alleges that DAPC is liable  
   as a control person for violations of both Rule 10b-5 and Section 15(a)(1) of the Exchange  
   Act.

1                   1. Section 17(a) and Section 10(b)

2           Generally, Section 17(a) prohibits fraud in the offer or sale of securities, and Section  
3   10(b) prohibits fraud in connection with the purchase or sale of any security. See SEC v.  
4   Dain Rauscher, Inc., 254 F.3d 852, 855-56 (9th Cir. 2001). Under Sections 17(a)(1) and (3),  
5   it is unlawful for any person to employ any device, scheme, or artifice to defraud, or to  
6   engage in any transaction, practice, or course of business which would operate as a fraud or  
7   deceit upon the purchaser. 15 U.S.C. § 77q(a)(1),(3). Similarly, Section 10(b) makes it  
8   unlawful, in connection with the purchase or sale of a security, “to employ any device,  
9   scheme, or artifice to defraud” or “to engage in any act, practice, or course of business which  
10   operates or would operate as a fraud or deceit upon any person.” 15 U.S.C. § 78j(b); 17  
11   C.F.R. § 240.10b-5(a),(c). Section 17(a)(2) makes it unlawful, in the offer or sale of a  
12   security by the use of interstate commerce, to obtain money or property by means of any  
13   untrue statement of a material fact or any omission to state a material fact necessary in order  
14   to make the statements made, in light of the circumstances under which they were made, not  
15   misleading. 15 U.S.C. § 77q(a)(2).

16           A showing of scienter is required to establish a violation of Section 17(a)(1) and  
17   Section 10(b); however, a violation of Sections 17(a)(2)-(3) requires either a showing of  
18   scienter or simple negligence. Aaron v. SEC, 446 U.S. 680, 696-97 (1980). Scienter is  
19   defined as a “mental state embracing intent to deceive, manipulate or defraud.” Ernst & Ernst  
20   v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). In the Ninth Circuit, scienter is established by  
21   a showing of either actual knowledge or recklessness. Gebhart v. SEC, 595 F.3d 1034, 1040  
22   (9th Cir. 2010). Reckless conduct is conduct that consists of a highly unreasonable act, or  
23   omission, that is an extreme departure from the standards of ordinary care, and which  
24   presents a danger of misleading buyers or sellers that is either known to the defendant or is  
25   so obvious that the actor must have been aware of it. See Dain Rauscher, 254 F.3d at 856  
26   (citation and quotation omitted). Negligence, by contrast, is the absence of “reasonable  
27   prudence.” Id.

28   ///

## 2. Elements of Liability

To establish liability under both Section 17(a)(1) and Section 10(b), the SEC must show, in the offer or sale, or in connection with the purchase or sale of a security: (1) that Janus Spectrum, Alcorn, and Maerki engaged in a scheme to defraud; (2) with scienter; (3) by means of interstate commerce. See Aaron, 446 U.S. at 696-97; Dain Rauscher, 254 F.3d at 855-56. Alternatively, under Section 17(a)(3), the SEC must show that Janus Spectrum, Alcorn, and Maerki: (1) engaged in a course of business that would operate as a fraud or deceit upon a purchaser; (2) acted at least negligently; (3) by means of interstate commerce. Id.

To establish liability under Section 17(a)(2), the SEC must show, in connection with the offer or sale of a security, that Janus Spectrum, Alcorn, and Maerki: (1) by means of interstate commerce; (2) obtained money or property; (3) by means of a material false statement or omission; and (4) acted at least negligently. Id.

## 3. Sections 17(a)(1),(3) and Section 10(b)

### *a. Scheme to Defraud*

The Court finds that Janus Spectrum, Alcorn, and Maerki engaged in a scheme to defraud and engaged in a fraudulent course of business. (Doc. 192 at 11-14.) The evidence shows that Janus Spectrum, through Alcorn and Maerki, promoted FCC spectrum licenses in the guard and expansion band as the “new black gold” and that the spectrum being promoted was high demand spectrum that is already in use with current income streams. (Id.)

Maerki, in his presentation entitled “Money from Thin Air,” misled investors assuring them that either Sprint, Verizon, AT&T, or T-Mobile were going to lease back from investors this spectrum on the guard or expansion band, paying investors a monthly fee, when in reality the major wireless carriers such as Sprint could not and would not use that spectrum to operate technology for cellular voice and data services due to the expansion or guard band channel only being authorized by the FCC to use a maximum bandwidth of 20 kilohertz. (Docs. 137-5, 192 at 3-4.) The cellular voice and data technology used by the major wireless carriers requires a minimum bandwidth of 1.25 to 1.4 MHz. (Doc. 192 at 4.) Despite this

1 reality, Maerki claimed that “Sprint or somebody [like] them” does not want to lose their  
2 capacity and would “probably lease it back [from] you [the investor] and pay you \$4,800 a  
3 month.” (Doc. 137-5 at 34.) Maerki continued, “Sprint is going to need [the 800 MHz  
4 spectrum] . . . But if they don’t take it, AT&T needs it, and so does Verizon. More  
5 importantly T-Mobile really needs it. So do the other ones.” (*Id.* at 34-35.) Maerki also  
6 asserted the expected revenues that could be realized from owning spectrum licenses: “They  
7 have 360 channels in that area, dividing that into the million, they’re making about \$3,000  
8 a channel. Your license in that area, should you select to be in that area, would be for four  
9 channels times \$3,000 or \$12,000 a month. Wow.” (*Id.* at 34.) Maerki continued: “In  
10 summary, let’s put it this way. There is a limited number of available licenses. Of course, it’s  
11 on a first come/first serve basis, very unique income stream opportunity, own somebody  
12 else’s income stream that they have to give up. Very low risk, As a result, very high income.  
13 Small investment, high value, certainly work free . . . How long before I make money? We  
14 have discussed that, a year or two years unless it’s a border, two to five years. Why isn’t  
15 everyone doing this? Simply, they haven’t learned about it yet . . . Urgency? Yes. First  
16 come/first serve. These will be gone in three to five months.” (*Id.* at 35-37.) In fact, Alcorn  
17 even spoke with a person in the legal department at Sprint and was told that Sprint would not  
18 have an interest in Janus Spectrum’s licenses and that Sprint was forbidden from buying  
19 them. (Doc. 192 at 21.)

20 This was reckless conduct. The prospective spectrum licenses at issue were not  
21 already in use generating current income streams. Janus Spectrum, through Alcorn and  
22 Maerki, made statements in presentations and emails that materially misled investors. (Doc.  
23 192 at 11-14.) The undisputed evidence show that they knew that the spectrum being sold  
24 had little or no value. (*Id.*) It is reckless conduct for an actor to mislead buyers when it is  
25 either known to the defendant or is so obvious that the actor must have been aware of it. See  
26 Dain Rauscher, 254 F.3d at 856. Janus Spectrum, through Alcorn and Maerki, knew that  
27 these representations about the value and uses of the spectrum being promoted, the expansion  
28 and guard bands, the alleged need for application urgency, and the ease to which those



1 licenses could be monetized, were all false. (Doc. 192 at 11-14.) Maerki also falsely claimed  
2 that “demand for 600,700, 800, and 900 MHz spectrum is the most efficient out there. That  
3 is what we are talking about today, those are the Rolls Royce of spectrum.” (Doc. 137-5 at  
4 25.) Rather, the undisputed evidence establishes that the 800 MHz spectrum licenses that  
5 Janus Spectrum, through Alcorn and Maerki, was promoting and selling through the  
6 Fundraising Entities had little or no value. (See Docs. 89-11, 89-12, 89-25 and 89-44.) The  
7 evidence shows that, unlike the broadband spectrum used by major cellular companies which  
8 can carry data, video and voice transmissions, the narrow spectrum being promoted and  
9 applied for could only be used for discrete purposes, such as push-to-talk, walkie-talkie-type  
10 radios used by dispatchers, and machine-to-machine communications. (Doc. 96 at 8-9.)

11 Janus Spectrum charged its clients \$40,000 per spectrum license application. Alcorn  
12 and Maerki led their clients to believe that the \$40,000 application fee was covering the  
13 actual cost for applying for FCC spectrum licenses in the 800 MHz expansion band and  
14 guard band. (Doc. 192 at 17.) In fact, Janus Spectrum paid Tusa Engineering approximately  
15 \$4,000 per application. (Id.) In addition to the license application fees Janus Spectrum paid  
16 to Tusa Engineering, Janus Spectrum paid \$410 per license application for FCC filing fees,  
17 and \$300 per channel to RadioSoft for frequency coordination services. (Id.) In order to  
18 avoid disclosing to Janus Spectrum’s clients/investors how much it was paying Tusa  
19 Engineering to prepare license applications, Alcorn asked Tusa Engineering for invoices that  
20 described the services provided and stated “paid in full” but did not specify a dollar amount.  
21 (Id.)

22 In addition to these fraudulent representations, Maerki failed to disclose his extensive  
23 disciplinary history in the securities industry. For instance, in 1984, Maerki was sued by the  
24 SEC for securities fraud and permanently enjoined from participating in the securities  
25 industry due to violations of the registration and antifraud provisions of the federal securities  
26 laws based on his offer and sale of investment contracts. (Doc. 192 at 18-19); see also SEC  
27 v. Prater, 289 F. Supp. 2d 39, 52-53 (D. Conn. 2003) (stating that “[t]he failure to disclose  
28 anywhere on the websites or in other materials any information about [Defendant’s]

1 extensive criminal history, including convictions for fraud, would certainly constitute a  
2 material omission which a reasonable investor might view as important in deciding whether  
3 to trust their money with [Defendant] or his company.”)

4 Further, Alcorn prepared “commission side letters” for Johnson and Chadwick to  
5 conceal their 33% commissions from their investors. (Doc. 192 at 9.) Alcorn also created a  
6 “pro forma” estimate of the value of licenses in the expansion and guard bands in the top 25  
7 economic areas and forwarded it Janus Spectrum’s clients, including Bank, Jones, Johnson  
8 and Chadwick, for their use in soliciting investors. Alcorn estimated annual returns ranging  
9 up to 3373% depending on the economic area, and an average annual return from all 25  
10 economic areas of 298%. (*Id.* at 13.)

11 Thus, based on all of the above evidence, Janus Spectrum, Alcorn, and Maerki,  
12 violated the anti-fraud provisions of Section 17 of the Securities Act and Section 10(b) of the  
13 Exchange Act.

14 *b. Scienter*

15 Next, the Court finds that Janus Spectrum, through Alcorn and Maerki, engaged in  
16 reckless conduct, therefore meeting the scienter requirement. (Doc. 192 at 18-19.) Reckless  
17 conduct is conduct that consists of a highly unreasonable act, or omission, that is an extreme  
18 departure from the standards of ordinary care, and which presents a danger of misleading  
19 buyers or sellers that is either known to the defendant or is so obvious that the actor must  
20 have been aware of it. *See Dain Rauscher*, 254 F.3d at 856. Recklessness may also be  
21 inferred from circumstantial evidence. *SEC v. Burns*, 816 F.2d 471, 474 (9th Cir.1987).

22 The Court has already discussed the factual basis for its finding of reckless conduct  
23 undertaken by Janus Spectrum, through Alcorn and Maerki. (*See supra* at 21-24.) In addition,  
24 the facts also show that Alcorn and Maerki did not conduct their required due diligence on  
25 the value or potential uses of the FCC spectrum licenses in the guard and expansion band,  
26 and were repeatedly warned in trade articles, in conversations with Sprint, and by their own  
27 advisors, that their underlying business model of leasing the FCC spectrum back to Sprint  
28 could not succeed. (Doc. 192 at 18-22.)

1 For instance, Alcorn and Maerki received and read copy of a March 5, 2012,  
2 newsletter published by Communications Daily, a reputable industry publication, which  
3 contained an article entitled “Phoenix Company Prepares License Application for Not-Yet  
4 Available Spectrum,” discussing Smartcomm. (Doc. 145-8.) In the article it states that  
5 Smartcomm “is marketing license preparation services for spectrum the FCC is not even  
6 close to making available, and which may have little value when it does.” (*Id.*) The article  
7 notes that Smartcomm charged \$42,000 per application for 800 MHz licenses, up to 280  
8 times what others are charging for similar services. (*Id.*) The article also discusses Pendelton  
9 Waugh, the founder of Smartcomm, and his prior criminal convictions for securities fraud,  
10 conspiracy to structure financial transactions to evade securities and banking reporting  
11 requirements, and prior securities fraud lawsuit brought by the SEC. (*Id.*) The article also  
12 notes that the spectrum at issue was located in the expansion and guard bands, and will not  
13 work for broadband because each channel is only 25kHz, and would only be attractive to  
14 private businesses like pizza restaurants who might use the push to talk media to  
15 communicate with its delivery drivers. (*Id.*) The article also quotes Alan Tilles, a  
16 Washington, D.C. area lawyer specializing in FCC work, who stated “There will be at some  
17 point a way to apply for these frequencies. The better question is why would you apply for  
18 them.” (Docs. 145-8, 152-9 at 25-27.) In fact, in March 2012, Tilles told Alcorn that  
19 “There’s NO spectrum below 861 MHz (and above 851 MHz) that can be used for any kind  
20 of broadband.” (Doc. 151.)

21 Furthermore, as all of this relates to Janus Spectrum, since a corporation acts through  
22 its officers, the culpability of an entity’s principals is imputed to the corporation. See, e.g.,  
23 SEC v. Platforms Wireless Int’l Corp., 559 F. Supp. 2d 1091, 1096 (S.D. Cal. 2008) (citation  
24 omitted).

25 *c. Interstate Commerce*

26 Although Janus Spectrum, Alcorn, and Maerki did not directly offer or sell the  
27 Fundraising Entities’ securities, they did so indirectly as they were both “a necessary  
28 participant and substantial factor” in all of the Fundraising Entities’ offerings and sale of

1 securities. Without question, the Fundraising Entities sold securities to investors nationwide,  
2 thus establishing interstate commerce. (Doc. 192 at 7-11.) For instance, Jones, by selling  
3 membership interests in PSG, raised a total of \$407,050 from 13 nationwide investors, which  
4 was pooled to invest in spectrum licenses. (*Id.* at 10-11.)

5 *d. Conclusion*

6 The SEC has established all of the elements showing that Janus Spectrum, Alcorn, and  
7 Maerki violated Sections 17(a)(1),(3) and Section 10(b) by undisputable evidence. The SEC  
8 unequivocally demonstrated that Janus Spectrum, Alcorn, and Maerki, in connection with  
9 the offer or sale of a security, were engaged in a scheme to defraud investors with scienter,  
10 and did so through means of interstate commerce. Therefore, the SEC is entitled to summary  
11 judgment against Janus Spectrum, Alcorn, and Maerki on the SEC's First and Second Claim  
12 for Relief for violations of Sections 17(a)(1),(3) and Section 10(b). (Doc. 105 at 28-29.)

13 4. Section 17(a)(2)

14 In order to establish a violation of Section 17(a)(2), the SEC must show that Janus  
15 Spectrum, Alcorn, and Maerki, in connection with the offer or sale of a security, (1) by  
16 means of interstate commerce; (2) obtained money or property; (3) by means of a material  
17 false statement or omission; and (4) acted at least negligently. *See Aaron*, 446 U.S. at 696-97.  
18 The misstatements and omissions must concern material facts. *Basic Inc. v. Levinson*, 485  
19 U.S. 224, 231-32 (1988). A fact is material if there is a substantial likelihood that a  
20 reasonable investor would consider it important in making an investment decision. *See TSC*  
21 *Indus. v. Northway*, 426 U.S. 438, 449 (1976). Liability arises not only from affirmative  
22 representations but also from failures to disclose material information. *Dain Rauscher*, 254  
23 F.3d at 855-56. The antifraud provisions impose a duty to disclose material facts that are  
24 necessary to make disclosed statements not misleading, whether mandatory or volunteered.  
25 *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996) (further citation and quotation  
26 omitted). Moreover, whether a statement or omission is material is determined as a matter  
27 of law where the statement or omission is so obviously important to an investor, that  
28 reasonable minds cannot differ on the question of materiality. *See Murphy*, 626 F.2d at 653

1 (“surely the materiality of information relating to financial condition, solvency and  
2 profitability is not subject to serious challenge”).

3 The Court has already found that although Janus Spectrum, Alcorn, and Maerki did  
4 not directly offer or sell the Fundraising Entities’ securities, they were intimately involved  
5 and thus were both “a necessary participant and substantial factor” in all of the Fundraising  
6 Entities’ offerings and sale of securities by means of interstate commerce. The Court has  
7 further found that Janus Spectrum, Alcorn, and Maerki were engaged in a scheme to defraud  
8 investors with scienter, and therefore, the Court need not repeat the evidence utilized to  
9 establish these elements. All that remains is the element of whether Janus Spectrum, Alcorn,  
10 and Maerki defrauded investors by means of material false statement(s) or omission(s).

11 *a. Material False Statement or Omission*

12 The Court finds that the following facts were material because there is a substantial  
13 likelihood that a reasonable investor would consider them important prior to making an  
14 investment decision. See TSC Indus., 426 U.S. at 449. First, Janus Spectrum, Alcorn and  
15 Maerki’s statements regarding the value and potential uses of licenses in the expansion and  
16 guard bands were materially false and misleading and they knew that their statements were  
17 false and misleading. (Doc. 192 at 15.) All of the high investment returns that were  
18 represented to investors were based on leasing to major wireless carriers, such as Sprint,  
19 Verizon, AT&T, and T-Mobile. (Id.) Because investors would not be able to lease to major  
20 wireless carriers, and instead only had the option to lease to a small business, or create a new  
21 business from the ground up, greatly diminished the represented value of the licenses. (Id.)  
22 The misstatements made by Janus Spectrum, through Alcorn and Maerki, were material to  
23 a reasonable investor, as there would have been no reason for a reasonable investor to pay  
24 tens of thousands of dollars for a license application for an investment that had little value.  
25 See, e.g., SEC v. Research Automation Corp., 585 F.2d 31, 35 (2d Cir. 1978) (finding  
26 materiality of misleading statements and omissions established because a reasonable investor  
27 would want to know if his investment is being diverted to company officers); see also SEC  
28 v. First Pac. Bancorp., 142 F.3d 1186, 1189, n.3 (9th Cir.1998) (discussing diversion of

1 investor funds in the context of securities fraud and disgorgement).

2 Janus Spectrum, Alcorn and Maerki also misled investors by showing Maerki's  
3 "Money From Thin Air" video, in which Maerki said that the spectrum at issue for licensing  
4 was "High demand spectrum that's already in use with current income streams." (Doc. 137-5  
5 at 20.) In fact, no channel that was available in the expansion or guard bands that Janus  
6 Spectrum, Alcorn and Maerki, through Maerki, was promoting had any existing income  
7 stream. (Doc. 192 at 15.)

8 Next, Janus Spectrum, Alcorn and Maerki's representations that the investment was  
9 "low risk" and "work free" were equally false and misleading. (*Id.* at 16.) The FCC will not  
10 sell an expansion or guard band license until an operating system is in place. (*Id.*) Thus, FCC  
11 regulations require, prior to sale of an expansion or guard band license, that the licensee build  
12 and operate a bona fide transmission system. (*Id.*) Buildout requirements ensure that  
13 spectrum will be used efficiently. (*Id.*) If the licensee does not build a transmission system  
14 within one year, the FCC will cancel the license. (*Id.*)

15 Finally, it was false for Janus Spectrum, Alcorn and Maerki to represent to potential  
16 investors that it was important to apply for the FCC licenses as quickly as possible because  
17 the licenses were going to be issued by the FCC on a first-come, first-served basis. (*Id.* at 16-  
18 17.) These statements about application urgency were false and misleading to investors.  
19 There was no need to prepare applications, or to solicit payments for such applications before  
20 the FCC issued a Public Notice opening up a particular geographic area. (*Id.*) The majority  
21 of the license applications created for Janus Spectrum clients were for geographic areas that  
22 were not subject to the FCC's first or second Public Notice. (*Id.* at 17.) As a result, the  
23 majority of the license applications created for Janus Spectrum's clients were for geographic  
24 areas for which the expansion and guard band licenses were not available at that time. (*Id.*)

25 *b. Conclusion*

26 Therefore, based on the above false statements and omissions, the SEC has  
27 demonstrated that Janus Spectrum, through Alcorn and Maerki's actions violated Section  
28 17(a)(2). The SEC has shown that Janus Spectrum, Alcorn and Maerki acted at least

1 negligently in marketing this investment scheme through the Fundraising Entities to  
2 prospective investors. In connection with the offer or sale of a security and through interstate  
3 commerce, Janus Spectrum, Alcorn and Maerki obtained money or property by means of  
4 these materially false statements and omissions. See Aaron, 446 U.S. at 696-97. The Court  
5 further finds that Janus Spectrum, Alcorn and Maerki's false statements, misrepresentations,  
6 and omissions were material to investors since they concerned the fundamental, underlying  
7 value of the FCC spectrum licenses. See, e.g., Murphy, 626 F.2d at 653 (stating that the  
8 materiality of information is not subject to serious challenge when it relates to financial  
9 condition, solvency and profitability).

10 Therefore, the SEC is entitled to summary judgment against Janus Spectrum, Alcorn  
11 and Maerki on the SEC's First Claim for Relief for violation of Section 17(a)(2). (Doc. 105  
12 at 28.)

13 *C. SEC's Section 15 Allegations Against Janus Spectrum, Alcorn and Maerki*

14 The SEC alleges that Janus Spectrum, Alcorn, Maerki, and DAPC as a control person,  
15 violated Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1) ("Section 15").<sup>6</sup> (Doc.  
16 191 at 19-21.) The SEC argues that Janus Spectrum, Alcorn and Maerki violated Section  
17 15(a)(1) because Section 15(a)(1) makes it unlawful for a broker or dealer "to make use of  
18 the mails or any means or instrumentality of interstate commerce to effect any transactions  
19 in, or to induce or attempt to induce the purchase or sale of, any security" unless such broker  
20 or dealer is registered with the SEC in accordance with Section 15(b). (Id.) The SEC need  
21 not prove the broker's scienter to establish a violation of Section 15(a). See SEC v. National  
22 Exec. Planners, Ltd., 503 F. Supp. 1066, 1073 (M.D. N.C. 1980).

23 The Alcorn Defendants contend that nothing links these Defendants to solicitations  
24 to these investors. (Doc. 210 at 17.)

25 Section 3(a)(4)(A) of the Exchange Act defines a "broker" as "any person engaged  
26 in the business of effecting transactions in securities for the account of others." 15 U.S.C. §

---

27  
28 <sup>6</sup>As mentioned earlier, the Court will consider *infra* DAPC's liability as a control  
person pursuant to Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).



78c(a)(4)(A). Activities that indicate a person may be a “broker” are: (1) regular participation in securities transactions, (2) employment with the issuer of the securities, (3) payment by commission as opposed to salary, (4) history of selling the securities of other issuers, (5) involvement in advice to investors, and (6) active recruitment of investors. See SEC v. George, 426 F.3d 786, 797 (6th Cir. 2005).

The undisputed evidence demonstrates that Janus Spectrum, Alcorn and Maerki acted as a broker because they actively solicited investors to purchase interests in spectrum licenses through the various Fundraising Entities of Bank, Jones, and Johnson/Chadwick. (Doc. 192 at 11-14.) The Court further finds that Janus Spectrum, Alcorn and Maerki regularly participated in the securities transactions at key points during the formation and closing of investor transactions, as they described the merits of investing in spectrum licenses to potential investors, answered investor questions, and solicited potential investors by email, in one-on-one meetings, and/or held live presentations for potential investors. (*Id.*) Finally, it is undisputed that neither Janus Spectrum, Alcorn nor Maerki were registered as a broker-dealer with the SEC.

Based on this factual record, the Court concludes that Janus Spectrum, Alcorn and Maerki violated Section 15(a)(1) of the Exchange Act, 15 U.S.C. § 78o(a)(1). Therefore, the SEC is entitled to summary judgment against Janus Spectrum, Alcorn and Maerki on the SEC’s Fourth Claim for Relief for violation of Section 15(a)(1). (Doc. 105 at 30.)

*D. SEC’s Allegations Against DAPC as Control Person*

The SEC alleges that DAPC is liable, as a control person, for Janus Spectrum’s violations of Section 10(b) and 15(a)(1) of the Exchange Act. (Doc. 191 at 21-22.)

Under Section 20(a) of the Exchange Act, a person may be held liable for another person’s violation of the Exchange Act as a “control person.” 15 U.S.C. § 78t(a). Section 20(a) applies to “every person,” and Section 3(a)(9) of the Exchange Act expressly defines “person” to include a company. 15 U.S.C. § 78c(a)(9). To establish control person liability under the Exchange Act, the SEC must demonstrate: (1) a violation of the Exchange Act, and (2) that the control person directly or indirectly controls the person liable for the violation.

SEC v. Todd, 642 F.3d 1207, 1223-24 (9th Cir. 2011); Hollinger v. Titan Capital Corp., 914 F.2d 1564, 1575 (9th Cir. 1990) (*en banc*) (holding it unnecessary to show “culpable participation” by control person). Under Rule 12b-2 of the Exchange Act, control is defined as the “power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.” 17 C.F.R. § 240.12b-2. The SEC need not prove that DAPC was a culpable participant in the violations or that there was the exercise of actual power. Merely possessing the power to control the activities underlying the violations is sufficient. Howard v. Everex Systems, Inc., 228 F.3d 1057, 1065 (9th Cir. 2011). However, even if a securities violation occurs, there is no liability if the controlling person acted in good faith and did not directly or indirectly induce the acts constituting the violation. See Id. at 1065 (“A defendant is entitled to a good faith defense if he can show no scienter and an effective lack of participation.”)

Here, DAPC has actual power or control over Janus Spectrum. (Docs. 128 at 5, 192 at 5.) DAPC has always been a managing member of Janus Spectrum, and it has been the sole owner of Janus Spectrum since January 2014 (prior to which it was a 55% owner). (Doc. 192 at 5.) According to the operating agreement of Janus Spectrum, DAPC is vested with final decision-making authority on behalf of Janus Spectrum, including all power over its finances and its corporate structure. (Id.)

Regarding the proceeds of the fraud, the evidence shows that DAPC received the proceeds, which further demonstrates its control over Janus Spectrum’s scheme. (Doc. 185 at 6-7); see Arthur Children’s Trust v. Keim, 994 F.2d 1390, 1397-98 (9th Cir. 1993) (reversing summary judgment on Section 20(a) claim granted in favor of a director on management committee of issuer who claimed he did not direct the investments at issue, noting that Section 20(a) claim arose “not because he controlled those marketing the investment contracts but because he was one of the persons controlling the issuer of the investment contracts”).

The Court finds that DAPC is liable, as a control person, for Janus Spectrum’s violations of Section 10(b) and 15(a)(1) of the Exchange Act. Therefore, the SEC is entitled

1 to summary judgment on the SEC's Second and Fourth Claims for Relief against DAPC as  
2 a control person for its violations of Section 10(b) and 15(a)(1) of the Exchange Act. (Doc.  
3 105 at 28-30.)

#### 4 **IV. RELIEF**

##### 5 *A. Permanent Injunction*

6 The SEC argues that here the evidence establishes a reasonable likelihood of a future  
7 violation of the securities laws, and therefore a permanent injunction should be granted in  
8 this matter. See Murphy, 626 F.2d at 655-56. Factors to be considered by the Court include  
9 the degree of scienter involved; the isolated or recurrent nature of the infractions; the  
10 defendant's recognition of the wrongful nature of his conduct; the likelihood that, based on  
11 the defendant's occupation, future violations might occur; and the sincerity of the defendant's  
12 assurances against future violations. Id.

13 The SEC argues that all of those factors weigh in favor of the Court issuing a  
14 permanent injunction. The Court agrees and a permanent injunction will be ordered.

##### 15 *B. Disgorgement/Prejudgment Interest*

16 Next, the SEC requests that the Court order disgorgement of illgotten gains. See SEC  
17 v. First Pac. Bancorp, 142 F.3d 1186, 1191 (9th Cir. 1998). Disgorgement is designed to  
18 deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws  
19 by making violations unprofitable. Id. Disgorgement usually includes prejudgment interest  
20 to ensure that the wrongdoer does not profit from the illegal activity. See SEC v. Manor  
21 Nursing Ctr. Inc., 458 F.2d 1082, 1105 (2d Cir. 1972). Disgorgement need be only a  
22 "reasonable approximation" of the defendant's ill-gotten gains. See SEC v. Platforms  
23 Wireless Int'l Corp., 617 F.3d 1072, 1096 (9th Cir. 2010). Once such evidence has been  
24 presented by the SEC, the burden shifts to the defendant to "demonstrate that the  
25 disgorgement figure was not a reasonable approximation." Id.

26 Here, the SEC has calculated a reasonable approximation of the amount of ill-gotten  
27 gains obtained by Janus Spectrum, DAPC, Alcorn and Maerki. (Doc. 185 at 9.) Based on  
28 these calculations, Janus Spectrum, DAPC, Alcorn and Maerki will be ordered to pay

1 \$6,172,360 in disgorgement and to be jointly and severally liable with each other for this  
2 disgorgement amount. Joint and several liability is appropriate when codefendants  
3 “collaborate or have a close relationship in engaging in the violations of the securities laws.”  
4 See Platforms Wireless, 617 F.3d at 1098; First Pacific Bancorp, 142 F.3d at 1191-92  
5 (defendants ordered jointly and severally liable even where one co-defendant received no  
6 personal benefit because of the closeness of the co-defendants’ relationship in orchestrating  
7 their fraud).

8 Janus Spectrum, DAPC, Alcorn and Maerki will also be ordered to pay prejudgment  
9 interest from May 1, 2012 to January 13, 2017, the date of filing of the SEC’s motion for  
10 summary judgment. Prejudgment interest on \$6,172,360 for this period is \$959,436. (Doc.  
11 193). Thus, the total amount of disgorgement and prejudgment interest owed by Janus  
12 Spectrum, DAPC, Alcorn and Maerki, on a joint and several liability basis, is \$7,131,796.  
13 (Id.)

#### 14 *C. Civil Penalties*

15 Civil penalties are meant to punish the individual wrongdoer and to deter him and  
16 others from future securities law violations. SEC v. Lyndon, 39 F. Supp. 3d 1113, 1123 (D.  
17 Haw. 2014). Because civil penalties are imposed to deter the wrongdoer from similar conduct  
18 in the future, in assessing civil penalties, courts frequently apply the factors set forth in  
19 Murphy, 626 F.2d at 655-56, which also determine the appropriateness of injunctive relief.  
20 See Lyndon, 39 F. Supp. 3d at 1123-24. Those factors are: the degree of scienter involved;  
21 the isolated or recurrent nature of the infraction; the defendant’s recognition of the wrongful  
22 nature of his conduct; the likelihood, because of the defendant’s professional occupation, that  
23 future violations might occur; and the sincerity of the defendants’ assurances, if any, against  
24 future violations. Murphy, 626 F.2d at 655.

25 Here, Alcorn’s, and Maerki’s violations were egregious, recurrent, and involved a  
26 high degree of scienter. In addition, Maerki is a recidivist, and neither Alcorn nor Maerki has  
27 expressed remorse or given any assurance against future violations.

28 According to the SEC, the Securities Act and Exchange Act provides that penalties

be assessed in accordance with a three-tier system. The third, or highest, tier applies to violations that: (1) involve “fraud, deceit, manipulation, or reckless disregard for a regulatory requirement”; and (2) “directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.” 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii). For each fraud violation, the maximum third-tier penalty is the greater of (1) \$160,000 for each violation occurring after March 5, 2013, or (2) the “gross amount of pecuniary gain” to the defendant as a result of the violation. 15 U.S.C. §§ 77t(d)(2)(C), 78u(d)(3)(B)(iii); 17 C.F.R. § 201.1004 & 201.1005 & Tables IV & V (2014).

In addition to disgorgement and prejudgment interest, the Court will assess civil penalties against Alcorn and Maerki in an amount to be determined at a future hearing.

## V. CONCLUSION

Accordingly, based on the foregoing,

**IT IS HEREBY ORDERED** granting the Plaintiff SEC’s Motion for Summary Judgment against Defendants Janus Spectrum, David Alcorn Professional Corporation, David Alcorn and Kent Maerki. (Doc. 191.)

**IT IS FURTHER ORDERED** denying Defendants Janus Spectrum LLC, David Alcorn, and David Alcorn Professional Corporation’s motion to strike “Plaintiff SEC’s Objection to Alcorn Defendant’s Index and Supplementary Declaration of Sana Muttalib.” (Doc. 221.)

**IT IS FURTHER ORDERED** establishing **Friday, October 27, 2017**, as the deadline for the SEC to file its motion for disgorgement, prejudgment interest, and civil penalties against Judgment Defendants Daryl Bank; Dominion Private Client Group, LLC; Janus Spectrum Group, LLC; Spectrum Management, LLC; Spectrum 100, LLC; Spectrum 100 Management, LLC; Prime Spectrum, LLC; and Prime Spectrum Management, LLC.

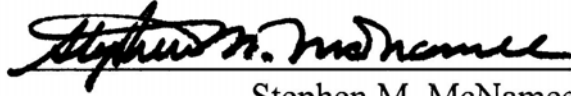
**IT IS FURTHER ORDERED** setting a hearing on civil penalties against Alcorn and Maerki for **Tuesday, December 5, 2017, at 2:00 p.m.** in Courtroom 401, 401 West

///

///

1 Washington Street, Phoenix, AZ, before Senior Judge Stephen M. McNamee.

2 DATED this 29th day of September, 2017.

3  
4 

5 Stephen M. McNamee  
6 Senior United States District Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28